

PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
TRUCKEE MEADOWS FLOOD CONTROL PROJECT

WHEREAS, The U. S. Army Corps of Engineers, Sacramento District (Corps), under the authority of House Conference Report (House Resolution 1905) to the Energy and Water Development Act of 1996 (Public Law 104-46), has determined that the Truckee Meadows Flood Control Project (Project) proposed by the Corps may have an effect on properties that are either included in, or are eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Nevada State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA); and

WHEREAS, the Corps has consulted with Washoe County, Storey County, the City of Reno, the City of Sparks, Nevada Department of Transportation, Federal Highway Administration, and the University of Nevada, Reno and has invited them to be concurring parties to this Programmatic Agreement (PA); and

WHEREAS, the Pyramid Lake Paiute Tribe, and the Washoe Tribe of Nevada and California have been contacted and afforded the opportunity to participate in the Section 106 process and will continue to be included throughout the process; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) was invited to participate in consultation and has declined; and

WHEREAS, this agreement addresses all phases and segments of the project; and

WHEREAS, the definitions set forth in 36 CFR 800.16 are incorporated herein by reference and apply throughout this PA;

NOW, THEREFORE, the Corps and the SHPO agree that the proposed undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties and to satisfy the Corps' Section 106 responsibilities for all individual aspects of the undertaking.

STIPULATIONS

The Corps shall ensure that the following measures are carried out:

Stipulation I Identification, Evaluation, and Effects Determination

- A. The Corps shall determine and document the Area of Potential Effects (APE) for the undertaking in consultation with SHPO. Future project design may require redefining the APE. The Corps shall consult with SHPO in a timely manner to amend the boundaries of the APE.
- B. The Corps shall complete and report the results of all required intensive surveys of the undertaking's APE in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Identification" (48 FR 44720-23) and take into account the National Park Service's publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock #024-016-00091). This will include areas not previously surveyed and areas where previous surveys are deemed by the Corps, in consultation with the SHPO, to be inadequate. This will also include additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, and other ancillary areas related to the undertaking. If identified cultural resources do not need to be evaluated but can be determined eligible based on the results of the survey and prepared contexts and historic documentation, then the Corps may request SHPO concurrence with those determinations at that time. Reports produced as a result of intensive surveys shall be submitted to SHPO for review. SHPO shall have 30 calendar days after receipt to provide comments to the Corps.
- C. Survey recordation shall include linear features, isolates, and re-recordation of previously recorded sites as necessary. The survey shall ensure that historical structures and buildings, and historical engineering features are recorded in addition to archeology sites. The types of properties to be recorded shall include, but not be limited to; commercial, residential, and ecclesiastical buildings, roads, trails, bridges, culverts, and agricultural features, including ditches. Recordation of historic structures and buildings shall be prepared using the State Historic Preservation Office, Historic Resources Inventory form, August 2004 revision.
- D. Previously recorded sites will be updated using the Nevada IMACS form and encoding form. Isolates will be numbered sequentially, plotted on a map and recorded on a single table within the report. Non-linear sites outside of the APE will be examined in their entirety unless access to land is prohibited. In the event access cannot be gained, the Corps will consult with SHPO regarding appropriate means of evaluating a given site. Linear resources (i.e., railroad, road, trail, ditch, etc.) that appear on GLO plat maps or are known from other archival data to be potentially significant, or which have associated features or dateable artifacts will be recorded on IMACS site forms. Linear resources not mentioned on GLO plat maps or that appear on GLO plat maps but which are not associated with features or dateable artifacts, and so not appear to be significant on the basis of known archival data will be treated as "isolated road segments" and will be recorded in tabular form and collected data will include at a minimum two (2) separate GPS points at both ends of the linear feature within the APE.
- E. The Corps shall ensure that Evaluation Plans (EP) prepared for previously unevaluated cultural resources identified within the APE are consistent with the "Secretary of the

Interior's Standards and Guidelines for Evaluation” (48 FR 44723-26). Individual EPs will be developed to address different categories of potentially eligible historic properties. A Discovery Evaluation Plan (DEP) and a Construction Monitoring Plan (CMP) shall be developed as components of an EP. An EP shall be used whenever the Corps, in consultation with the SHPO, determines that a cultural resource should be evaluated and use of the EP is essential to determine the boundaries and data potential of the site. Any archaeological testing shall be limited to disturbing no more than 20% of the surface area of the resource and shall be just sufficient to determine a site’s eligibility for inclusion in the National Register.

- F. The Corps shall submit the EP for concurrent review to the SHPO, and appropriate Native American groups. Reviewers shall have 30 calendar days after receipt to comment on the draft EP. The Corps shall ensure that any comments received within that time period are taken into account and incorporated into the final EP. If the Corps cannot concur with comments made by SHPO and/or tribes, the Corps will resolve the dispute in accordance with Stipulation X. Failure of the SHPO to comment within the specified time period shall not preclude the Corps from allowing the draft EP to be finalized and implemented in accordance with the terms of this stipulation. The Corps shall ensure that the SHPO is expeditiously provided with copies of the final EP.
- G. The Corps in consultation with SHPO shall ensure that determinations of eligibility are made in accordance with the criteria set forth in 36 CFR 60.4 for all properties within the APE, including additional areas that may be affected by changes in the project design, borrow areas, haul roads, staging areas, extra work space, and other ancillary areas related to the undertaking. If the Corps and the SHPO cannot agree on the National Register eligibility of a property, the Corps shall obtain a determination from the Keeper of the National Register in accordance with 36 CFR 63. The determination of the Keeper shall be final for purposes of this PA.
- H. The Corps shall ensure that copies of draft evaluation reports are submitted concurrently to the SHPO, other concurring parties for review and comment.
- I. Failure by any reviewer to comment within this time period shall not preclude the Corps from allowing draft reports to be finalized. The Corps shall ensure that all reviewers named in this stipulation shall expeditiously receive copies of all final survey and evaluation reports.
- J. The Corps shall ensure that historic, architectural, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of person meeting qualifications set forth in the Secretary of the Interior’s Professional Qualification Standards (36 CFR 61).

Stipulation II

Determinations of Effect

The Corps shall the Criteria of No Adverse Effect pursuant to 36 CFR 800.5(a) (1) to all historic properties within the APE that will be affected by the Project. Determinations of effect shall be made in consultation with the SHPO and other interested parties.

Stipulation III

Public and Native American Involvement

- A. The Corps will identify and consult with appropriate tribes to identify properties of traditional religious and cultural importance.
- B. The Corps shall seek comments from all potentially interested Native American groups in light of the guidance provided in National Register Bulletin 38 in making determinations of eligibility for any Traditional Cultural Properties as these are defined in Bulletin 38. All reviewers shall have 30 calendar days after receipt to provide comments to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final survey and evaluation reports. Disputes shall be resolved by the Corps in accordance with Stipulation X.
- C. The Corps, in consultation with SHPO, shall evaluate the request of a special interest group to be a concurring party to this agreement following its execution.

Stipulation IV

Preparation of Historic Property Treatment Plans

The Corps, in consultation with SHPO shall ensure that a Historical Property Treatment Plan (HPTP) is developed for the mitigation of anticipated effects on historic properties that will result from the Project and any related uses and activities. Further, the Corps, in consultation with SHPO, will ensure the development of location and property specific Data Recovery Plans for each individual permit application of the Project that will be considered as Supplements to the Treatment Plan.

- A. Avoidance of adverse effects on historic properties is the preferred treatment approach. The HPTP will discuss and justify the chosen approaches to the treatment of project historic properties and those treatment options considered, but rejected. If preservation of part or all of any historic properties is proposed, the treatment plan will include discussion of the following:
 - 1. Description of the area or portions of the historic properties to be preserved in-place, and an explanation of why those areas or portions of sites were chosen;
 - 2. Explanation of how the historic properties will be preserved in-place, including both legal and physical mechanism for such preservation;
 - 3. A plan for monitoring and assessing the effectiveness of mechanisms to preserve the historic properties; and
 - 4. A plan for minimizing or mitigating future adverse effects on the historic properties if preservation in-place mechanisms prove to be ineffective.

- B. When avoidance is not feasible, the Corps in consultation with SHPO shall ensure that its consultant develops an appropriate treatment plan designed to lessen or mitigate project-related effects to historic properties. For properties eligible under criteria (a) through (c) (36 CFR 60.4) mitigation other than data recovery may be considered in the treatment plan (e.g., HABS/HAER recordation, oral history, historic markers, exhibits, interpretive brochures or publications, etc.). Where appropriate, treatment plans shall include provisions (content and number of copies) for a publication for the general public.
- C. When data recovery is proposed, the Corps in consultation with SHPO shall ensure that its consultant develops a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeologist Sites" (ACHP May 18, 1999). Components to be included in data recovery plans are found in Appendix 2..
- D. Each phrase or segment specific treatment plan tier off of the HPTP prepared for the project, providing specific direction for the conduct of data recovery within any project segment. Components of each plan are referenced in Appendix .
- E. The interested public, including Native American tribes will be invited to provide input on the identification, evaluation, and proposed treatment of historic properties. Depending on the specific nature of the undertaking this will be done through letters of notification, public meetings, and site visits.

Stipulation V

Treatment of the Virginia Street Bridge

The Virginia Street Bridge (VSB) is an historic property listed in the National Register of Historic Places. Treatment of the VSB shall be consistent with the stipulations contained within the Memorandum of Agreement for The Virginia Street & Center Street Bridges executed on 20 May 1996 between the Federal Highway Administration, The Nevada State Historic Preservation Office Bridge, and the Advisory Council on Historic Preservation (Attachment 1).

Stipulation VI

Review of Treatment Plan and Supplemental Treatment Plans

The Corps shall ensure that draft HPTP's and STP's are submitted concurrently to the SHPO, the Council, and appropriate Native American groups and individuals for review and comment. Reviewers shall have 30 calendar days after receipt of the draft HPTP to comment to the Corps. The Corps shall ensure that any comments received during this time period are taken into account and incorporated into the final HPTP. The Corps shall make every effort to resolve disputes that may arise from conflicting comments by the consulting parties via telephone conversations. In the event that disputes are not easily remedied, the Corps shall resolve them in accordance with Stipulation X. Failure to comment within this time period shall not preclude the

Corps from allowing the HPTP to be finalized and implemented. The Corps shall ensure that all reviewers are expeditiously provided with copies of the final HPTP.

- A. If revisions are needed, any party, including the SHPO, has 30 days to review the revisions. If no comments are received within 30 days, concurrence among the parties will be assumed.
- B. Once the reviewing parties determine the HPTP adequate, the Corps shall issue authorization to proceed with the development of STP's. A separate 30-day period for all consulting parties shall apply to the review of the STP's.
- C. Once the reviewing parties determine the STP's adequate, the Corps shall issue authorization to proceed with the implementation of the plans.
- D. Final drafts of the HPTP and all subsequent STP's will be provided to SHPO and the Council.

Stipulation VII

Modifications in Construction, Right-of-Way, and Ancillary Areas

- A. Identification and Evaluation
 - 1. If rerouting a portion of the proposed right-of-way (ROW) becomes necessary or if activities are proposed in ancillary areas (AA's) (for example, borrow or disposal areas) that have not been previously surveyed for historic properties, the Corps shall ensure that the APE of the proposed reroute or unsurveyed AA is inventoried and that any properties located within those APE's that may be affected by the undertaking are evaluated.
 - 2. Identification and evaluation of such properties will be carried out in the manner specified in Stipulation IA - II, inclusive, except as noted below.
- B. Supplemental Treatment Plans
 - 1. Where historic properties within the rerouted ROW or AA's may be affected by the undertaking, the Corps shall ensure that specific STP's are prepared.
 - 2. The STP's shall be prepared in the manner specified in Stipulation IIA - IIB, inclusive, except as noted below.
- C. Review of STP's

Review of STP's shall proceed in the manner specified in Stipulation V.
- D. The Corps may authorize construction in any area subject to the provisions of this stipulation after the Corps and the SHPO have consulted and agreed in writing that such construction either will not affect historic properties, or that the area does not contain historic properties.

Stipulation VIII
Notices To Proceed With Construction

Notices to Proceed (NTP) may be issued by the Corps for individual construction segments, defined by the Corps in its construction Specifications, under any of the following conditions:

1. the Corps and SHPO have determined that there are no cultural resources within the APE for a particular construction segment; and
2. the Corps and SHPO have determined that there are no historic properties within the APE for a particular construction segment; or
3. the Corps after consultation with the SHPO and interested persons has implemented an adequate treatment plan for the construction segment, and
 - (a) the fieldwork phase of the treatment option has been completed;
 - (b) The Corps has accepted a summary of the fieldwork performed and a reporting schedule for that work.

Stipulation IX
Discovery of Unknown Historic Properties

If potentially National Register eligible cultural resources are discovered during construction, ground disturbing activities will cease until the provisions of 36 CFR 800.13(b), Discoveries without prior planning, are met. The Corps will provide the SHPO and the Council an opportunity to review and comment on proposed treatment in accordance with Stipulation IC. The Corps will contact the SHPO by facsimile machine, telephone, and/or email within 48 hours of the discovery. The SHPO has 48 hours to respond by facsimile machine, telephone, and/or email following initial contact by the Corps.

Stipulation X
Curation

The Corps shall ensure that all cultural materials and associated records resulting from identification, evaluation, and treatment efforts conducted under this PA are curated in accordance with 36 CFR Part 79, except as specified in Stipulation IXB. Archaeological items and materials from privately owned lands to be returned to their owners should be maintained in accordance with 36 CFR 79 until any specified analyses are complete. The Corps shall ensure that historic, architectural, and archaeological work conducted pursuant to this Agreement is carried out by, or under the direct supervision of person meeting qualifications set forth in the Secretary of the Interior's Professional Qualification Standards (36 CFR 61).

Stipulation XI

Native American Consultation and Treatment of Human Remains

- A. The Corps in consultation with SHPO will ensure that Native Americans are consulted during, and may participate in, implementation of the terms of this PA. The specific manner in which this Native American involvement will occur will be set forth in the HPTP's.
- B. The Corps will ensure that Native American human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking that are located on state or private land are treated in accordance with the requirements of NRS 383, and on federal land the Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resources Protection Act (ARPA).

Stipulation XII

Dispute Resolution

- A. Should any signatory to this PA object within 30 calendar days to plans provided for review pursuant to this PA or to actions proposed or carried out pursuant to this PA, the Corps shall notify the other signatories to this PA and consult to resolve the objection. If the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute to the Council. Within 45 days after receipt of all pertinent documentation, the Council shall either:
 - 1. Provide the Corps with recommendations that the Corps shall take into account in reaching the final decision regarding the dispute; or
 - 2. Notify the Corps that it will comment pursuant to 36 CFR 800.7, and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by the Corps in accordance with 36 CFR 800.7 with reference to the subject of the dispute.
- B. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The Corps's responsibility to carry out all actions required by this PA that are not subject of the dispute shall remain unchanged.

Stipulation XIII

Amendments, Noncompliance, and Termination

- A. If any signatory believes that the terms of this PA cannot be carried out or are not being met, or that an amendment to its terms should be made, that signatory will immediately consult with the other signatories to consider and develop amendments to this PA pursuant to 36 CFR 800.6(c)(7)

- B. If this PA is not amended as provided for in this stipulation, the Corps, the SHPO, or the District may terminate it. The party terminating the PA will in writing provide all other signatories with an explanation of the reasons for termination in accordance with 800.6(c)(8).
- A. If this PA is terminated and the Corps determines that the undertaking authorizing the project will proceed, the Corps shall comply with 36 CFR 800.3-6.

Stipulation XIV
Duration of the PA

- A. If the project has not been implemented within ten (10) years of the date of execution of the PA and the PA has not been terminated, the signatories shall consult on a date not less than 90 days prior to the tenth anniversary of this PA to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment, or termination. If the PA is terminated because the undertaking no longer meets the definition of an “undertaking” set forth in 36 CFR 800.16(y), Stipulation XI(C) shall apply.
- B. This PA will be in effect through the Corps’s implementation of the undertaking, and will terminate and have no further force or effect when the Corps, in consultation with the other signatories, determines that the terms of this PA have been fulfilled in a satisfactory manner and/or Corps involvement in the project has ended. The Corps will provide the other signatories with written notice of its determination and of termination of this PA.

Stipulation XV
Effective Date

This PA shall take effect on the date that it has been fully executed by the Corps and the SHPO.

EXECUTION of this PA by the Corps, the District, and the SHPO, its transmittal to the Council, and subsequent implementation of its terms evidence that the Corps has afforded the Council an opportunity to comment on the undertaking and its effects on historic properties, that the Corps has taken into account the effects of the undertaking on historic properties, and that the Corps has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and applicable implementing regulations for all aspects of the undertaking.

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

BY: _____ DATE: _____

Ronald N. Light, Colonel, U.S. Corps of Engineers, District Engineer

NEVADA STATE HISTORIC PRESERVATION OFFICE

BY: _____ DATE: _____

CONCURRING PARTIES

PYRAMID LAKE PAIUTE

BY _____ DATE: _____

TITLE: _____

WASHOE TRIBE OF NEVADA AND CALIFORNIA

BY _____ DATE: _____

TITLE: _____

CITY OF RENO

BY: _____ DATE: _____

CITY OF SPARKS

BY: _____ DATE: _____

STOREY COUNTY

BY: _____ DATE: _____

UNIVERSITY OF NEVADA, RENO

BY: _____ DATE: _____

WASHOE COUNTY

BY: _____ DATE: _____

Appendix 1

Standards and Guidelines for Research Designs

Research designs prepared for this undertaking shall specify, at a minimum:

- The property, or properties, or portions of properties where data recovery is to be carried out;
- Any property, or properties or portions of properties that will be destroyed with data recovery;
- The research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
- The methods to be used, with an explanation of their relevance to the research questions;
- The methods to be used in analysis, data management, and dissemination of data, including a schedule;
- The proposed disposition of recovered materials and records;
- Proposed methods by which the parties to the Programmatic Agreement will be kept informed of the work and afforded the opportunity to participate; and
- A proposed schedule for the submission of progress reports to the Nevada State Historic Preservation Officer.

Appendix 2
Historic Property Treatment Plans (HPTP) shall address:

- The historic properties or portions of historic properties where treatment will be implemented;
- Any historic properties or portions of historic properties that will be destroyed or altered without treatment;
- A research design that will contain the research questions and goals that are applicable to the project area as a whole and that will be addressed through data recovery, along with an explanation of their relevance and importance. These research questions and goals shall reflect the concepts of historic contexts as defined in National Register Bulletin 16. Historic contexts shall be prepared to provide the necessary background information to properly evaluate historical, engineering, and architectural properties;
- The field and analysis methods to be used, with an explanation of their relevance to the research questions;
- The methods to be used in data management and dissemination of data, including a schedule;
- The proposed disposition of recovered materials and records;
- Proposed methods for disseminating results of work to the interested public;
- Proposed methods by which appropriate Native American groups and individuals, local governments, and other interested persons will be kept informed about implementation of the HPTP and afforded an opportunity to comment;
- A proposed schedule for submission of progress reports to the Corps, SHPO, and the Council;
- Methods and procedures for the recovery, analysis, treatment, and disposition of human remains, associated grave goods, and objects of cultural patrimony that reflect any concerns and/or conditions identified as a result of consultations between the Corps and any affected Native American Group (see Stipulation IX);
- The historic properties to be affected in the specified project segment and the nature of those effects;
- The research questions identified in the HPTP that will be appropriate for the specified project segment and that will be addressed through data recovery, along with any explanation of their relevance to the overall research goals as established in the HPTP;

- The specific field work and analytical strategies identified in the HPTP, as well as any other strategies that will be used in the specified project segment;
- A proposed schedule for submission of progress, summary, and other reports to the Corps and;
- Qualifications of consultants employed to undertake the implementation of the STP.

Avoidance of adverse effects on historic properties is the preferred treatment approach. The HPTP will discuss and justify the chosen approaches to the treatment of project historic properties and those treatment options considered, but rejected. If preservation of part or all of any historic properties is proposed, the treatment plan will include discussion of the following:

5. Description of the area or portions of the historic properties to be preserved in-place, and an explanation of why those areas or portions of sites were chosen;
6. Explanation of how the historic properties will be preserved in-place, including both legal and physical mechanism for such preservation;
7. A plan for monitoring and assessing the effectiveness of mechanisms to preserve the historic properties; and
8. A plan for minimizing or mitigating future adverse effects on the historic properties if preservation in-place mechanisms prove to be ineffective.